



## INTERIOR BOARD OF INDIAN APPEALS

Estate of Felix Walking, a.k.a. Philip Walking

6 IBIA 153 (10/12/1977)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

## ESTATE OF FELIX WALKING a/k/a PHILIP WALKING

IBIA 77-42

Decided October 12, 1977

Appeal from an Order Denying Petition for Rehearing.

Affirmed.

1. Indian Probate: Wills: Testamentary Capacity: Generally

A judge's findings regarding testamentary capacity will not be set aside where supported by evidence adduced at a probate hearing on the will.

APPEARANCES: Jerry Matthews, Esq., of the South Dakota Legal Services, for Appellants Richard Walking, Cyrus Walking, Annie Walking; John B. Richard, Tribal Attorney, for Appellees Guy E. Janis and Ida Bird Necklace Janis.

### OPINION BY CHIEF ADMINISTRATIVE JUDGE WILSON

The above-entitled matter comes before this Board upon petitions filed by Richard Walking, Cyrus Walking, and Annie Walking, hereinafter referred to as Appellants, under dates of March 10, 1977, March 22, 1977, and April 13, 1977. The petitions styled as petitions for rehearing will be treated as appeals from a decision of Administrative Law Judge Daniel S. Boos dated February 17, 1977, denying their petition for rehearing. The petitions, although filed separately, will be consolidated and considered as one appeal since the allegations and contentions are identical.

The record indicates Felix Walking, also known as Philip Walking, hereinafter referred to as decedent, died testate on January 1, 1974, at the age of 67 years, having executed a last will and testament on January 30, 1968.

Two hearings were held in the matter; the first on January 14, 1976, and the second on August 25, 1976. The latter hearing was held to take testimony regarding decedent's last will and testament in view of the objections raised thereto in the earlier hearing.

On December 13, 1976, Judge Boos entered an Order Approving Will and Decree of Distribution in the matter. Thereafter, within the allowable 60-day period, the Appellants on January 11, 1977, January 14, 1977, and January 24, 1977, filed petitions for rehearing. In support of their petitions each Appellant alleged as follows:

1. Petitioner is one of the intestate heirs of decedent.
2. That the last will and testament of Felix Walking terminated the rights and interest of petitioner in decedent's estate.
3. Petitioner asserts that the findings of the Administrative Law Judge is contrary to the evidence which was presented before him.
4. Petitioner asserts on information and belief that threats were made to the witnesses which caused some of them to give testimony which did not correctly reflect the actual circumstances of decedent's competency or his relationship to the testate heirs.
5. Petitioner asserts that there is sufficient evidence available to show that decedent lacked testamentary [sic] capacity and, thus, could not make a proper or valid will.

Judge Boos in his Order Denying the Petition for Rehearing dated February 17, 1977, found that the testimony of the attesting witnesses clearly established decedent's testamentary capacity and due execution of the will in question, and that the Appellants and their witnesses had failed to controvert such testimony.

[1] A review of the record indicates the evidence adduced at the hearing on the will clearly supports the judge's findings regarding the decedent's testamentary capacity. Accordingly, his findings will not be set aside.

As for Appellants' claim of intimidation and threats to their witnesses, we are in agreement with the judge that the claim is unfounded.

Moreover, the fact that the decedent may have had or may not have had a close relationship to the beneficiaries is irrelevant so long as he had the necessary testamentary capacity, and he could therefore dispose of his property as he saw fit.

For the reasons set forth above the judge's decision of February 17, 1977, denying Appellants' petition for rehearing should be affirmed and the appeal dismissed.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Order Denying Petition for Rehearing entered by Administrative Law Judge Daniel S. Boos, on February 17, 1977, is AFFIRMED and the Appellants' appeal is DISMISSED.

This decision is final for the Department.

Done at Arlington, Virginia.

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//original signed  
Alexander H. Wilson  
Chief Administrative Judge

I concur:

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//original signed  
Mitchell J. Sabagh  
Administrative Judge